

4. As a result of the significant advertising and publicity, and of several years of continuous use in the marketplace, Petitioner's mark has become known as a distinctive indicator of the origin of Petitioner's goods, and it symbolizes Petitioner's valuable goodwill.

5. Notwithstanding Petitioner's prior rights in its mark, Registrant has obtained Registration No. 2,781,559, for the mark SANTA EDWIGES & Design for "farinaceous food paste, namely, alimentary pastes; cookies; biscuits; petit beurre biscuits; crackers; risks; cake paste and cake powder, namely, cake mixes; cakes; sweetmeats; caramels; chewing gum; chocolate; edible ices; candy; ferments for pastes, namely, yeast; corn flakes; pies; fondants, fruit jellies in the nature of confectionery; bread rolls; pancakes; bread; popped popcorn; petit fours, puddings; ice cream; waffles; and panettones, in Class 30".

6. Upon information and belief, Registrant made no use of its alleged mark in commerce prior to the filing date of its application.

7. Upon information and belief, when Registrant applied to register the mark at issue, Registrant had full knowledge of Petitioner's prior rights in the mark PAN SANTA EDUVIGIS.

8. Petitioner has used its mark PAN SANTA EDUVIGIS continuously on or in connection with its goods in interstate commerce since long prior to the filing date of Registrant's application which matured into Reg. No. 2,781,559.

9. Registrant's alleged mark so resembles Petitioner's mark that the use thereof by Registrant, and the continued existence of Registration No. 2,781,559, is likely to cause confusion, mistake and/or deception within the meaning of Section 2(d) of the

Trademark Act as to the source or origin of Registrant's goods, and will injure and damage Petitioner and the goodwill and reputation symbolized by Petitioner's mark.

10. Petitioner has been and will be damaged by the continued existence of Registration No. 2,781,559 because the mark shown in the registration is likely to cause confusion, mistake or deception among consumers who may believe that the goods of Registrant emanate from or are in some way sponsored or endorsed by or associated with Petitioner.

11. Registrant is not affiliated or connected with or endorsed or sponsored by Petitioner, nor has Petitioner approved any goods or services offered or sold by Registrant under the mark SANTA EDWIGES & Design, nor has Petitioner granted Registrant permission to use said mark

12. Petitioner's goods and those of Registrant are identical or so closely related that the public is likely to be confused and to assume erroneously that Registrant's goods are Petitioner's goods or that Registrant is connected with, sponsored by or affiliated with Petitioner.

13. Upon information and belief, Registrant adopted the registered mark and has subsequently used the registered mark with a deliberate intent to cause confusion among purchasers as to the source of its products.

14. Likelihood of confusion in this case is enhanced by the fact that the word EDWIGES in Registrant's mark SANTA EDWIGES & Design is a translation into English of the word EDUVIGIS in Petitioner's mark PAN SANTA EDUVIGIS.

WHEREFORE, Petitioner requests that the Board grant this petition for cancellation.

ERNESTINA CASTRO S.A.DE C.V.

By _____

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76,457,276

Arent Fox
ATTORNEYS AT LAW

September 24, 2004

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BY COURIER

Our Ref.: 024117-00001

Assistant Commissioner of Trademarks
US Patent and Trademark Office
2900 Crystal Drive
Arlington, VA 22202

Re: Petition to Cancel Reg. No. 2,781,559 (PAN SANTA EDWIGES & Design)

Dear Sir/Madam:

Enclosed for filing in triplicate is a Petition to Cancel the above-referenced registration. Also enclosed is a check in the amount of \$300.00 to cover the filing fee. Please charge any other necessary expenses to our deposit account No. 01-2300.

Please direct any correspondence and questions regarding this proceeding to Cristina A. Carvalho at Arent Fox PLLC at 1050 Connecticut Avenue, NW, Washington, DC 20036. Thank you.

Sincerely,

Kwan Koehler
Senior Legal Assistant

Enclosures

cc: Cristina A. Carvalho, Esq.
Chiara Giuliani, Esq.



09-24-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

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